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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/736,723	<b>Applicant(s)</b> LIFSON, KALMAN A.	
	<b>Examiner</b> Carol See	<b>Art Unit</b> 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. In response to Applicant's Arguments/Remarks, filed on 10/23/2008 and 6/2/2009 (substantially duplicative of 10/23/2008, with clarifying language in response to notice of non-compliant amendment), Examiner acknowledges amendment of claims 1, 2, 6, 7 and 10-16; cancellation of claims 8 and 17; and reiterated cancellation of claims 19-25.
2. Examiner further acknowledges Applicant's response and clarification regarding notice of non-compliant amendment (mailed 5/27/2009); which notice is hereby withdrawn.
3. Examiner further acknowledges Applicant's amendment of the specification (pg. 20, lines 13-30) and of Figures 2 and 3.
4. Applicant's amendment of claim 1 overcomes the previous rejections under 35 USC 101, which rejection is hereby withdrawn.
5. Applicant's amendments of claims 1, 2 and 10 overcome the previous rejections under 35 USC 112, which are hereby withdrawn.
6. Applicant's cancellation of claims 8 and 17 renders moot all previous objections and rejections; the previous objections and rejections are hereby withdrawn.
7. Applicant's previous (and reiterated in this 6/2/09 response) cancellation of claims 19-25 (as of 2/25/2008) renders moot all previous objections and rejections of those claims; those objections and rejections are hereby withdrawn.
8. Examiner further acknowledges Applicant's interview summary (pg. 9, Oct. 9, 2008).

9. Claims 1-7, 9-16 and 18 are pending in this action.

***Response to Arguments***

10. Applicant's arguments with respect to claims 8 and 17 have been considered but are moot in view of the new ground(s) of rejection.

11. Further, Applicant argues (pg. 13-14):

No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.

Response: Regardless that Applicant's arguments are moot in the light of new rejections, Examiner respectfully notes that Applicant's failure to address Examiner's arguments is taken as Applicant's acquiescence to those arguments. For example, see "Official Notice" arguments below.

***Election/Restrictions***

12. In response to Applicant's Argument/Remarks filed 10/23/2008 and 6/2/2009, Examiner acknowledges Applicant's explicit cancellation without prejudice or disclaimer of claims 19-25, invention II. (Prior to this explicit cancellation, Examiner had withdrawn a restriction requirement for these claims (6/25/2008)).

### ***Claim Objections***

13. Claims 1, 11 and objected to because of the following informalities:

- for purposes of clarity, Examiner suggests the following punctuation
  - claim 1: creating, using...computers, a first..."
  - in the purchasing step, the recitation "and wherein the purchasing or selling does not include stocks eliminated from considering (misspelled?) during the eliminating step" seems redundant, because it is obvious that what ever is eliminated from consideration for purchasing or selling would not be included in what is purchased or sold.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

14. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

15. Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 2-7, 9-10 are rejected as depending from claim 1. Claims 12-16 and 18 are rejected as depending from claim 11.

Re claim 1:

- the purchasing step refers to "...the equation", but does not specify which equation is intended.

- in the purchasing step, it is unclear how the purchasing or selling is “based upon” the estimates made...
- the estimating step refers to “...the equation”, but does not specify which equation is intended.
- in the creating step, it is unclear as to what the phrase “market value” is referring.

Re claim 11:

- in the first element that begins “create a first equation...”, it is unclear as to what the phrase “market value” is referring.

### ***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 1-4, 6-7, 9, 11, 13, 15, 16, 18 are rejected under 35 U.S.C. 102(b) as being unpatentable over Li (U.S. 6,453,303) in view of Multiple Regression website (2002)(hereinafter referred to as “MR website.”).

As to claim 1, Li shows a computer-implemented method, comprising:

creating using one or more computers a first equation for a plurality of stocks, wherein the equation is created using multiple linear regression techniques to calculate a plurality of coefficients each associated with one of a plurality of statistic types that is

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correlated with actual market prices of the plurality of stocks wherein at least some of the plurality of statistic types comprise financial information, other than the particular stock's past market price, specific to an entity associated with the particular stock and wherein a dependent variable of the first equation comprises a measure predictive of market value (col. 4, lines 40-59 and col. 5, lines 27-54, showing calculation of coefficients using historical and real time data, and linear regression and analysis of market value);

estimating, using the one or more computers and the equation, the degree to which ones of the plurality of stocks are over-priced or under-priced relative to the price of other ones of the plurality of stocks (col. 4, lines 40-59 and col. 5, lines 27-54, showing calculation of coefficients using historical and real time data, including Beta (from linear regression), then using this information to determine if asset is overbought or oversold(under-priced));

purchasing or selling at least some stocks, futures contracts on at least some stocks, or options on at least some stocks, in the plurality of stocks, wherein the purchasing or selling is based upon the estimates made using the equation and wherein the purchasing or selling does not include stocks eliminated from considering during the eliminating step (col. 5, line 40 through col. 6, line 11-21, showing calculations and analysis of various indicators and recommendations to buy or sell based on that information).

Li does not expressly show eliminating some stocks from consideration for purchasing or selling, using the one or more computers, based upon a first elimination criterion wherein the first elimination criterion itself is determined using a second equation

created using multiple linear regression techniques to determine a prediction of the value of a particular financial statistic and wherein the first elimination criterion comprises eliminating stocks where the actual value of the particular financial statistic for a stock exceeds a threshold variance from the prediction of the value of the particular financial statistic for the stock and wherein the particular financial statistic is different from the dependent variable of the first equation; and wherein the purchasing or selling does not include stocks eliminated from considering during the eliminating step

The MR website teaches that multiple regression is used to predict the variance in a dependent variable based on combinations of independent variables (pg. 1). MR Website further shows eliminating some stocks from consideration for purchasing or selling, using the one or more computers, based upon a first elimination criterion wherein the first elimination criterion itself is determined using a second equation created using multiple linear regression techniques to determine a prediction of the value of a particular financial statistic and wherein the first elimination criterion comprises eliminating stocks where the actual value of the particular financial statistic for a stock exceeds a threshold variance from the prediction of the value of the particular financial statistic for the stock and wherein the particular financial statistic is different from the dependent variable of the first equation (page 12, indicating elimination of outliers of a value more than 2 standard deviations from a predicted value, shows eliminating outliers of an equation created using multiple linear regression). MR Website presents generally an independent variable, which may be determined by a user, being correlated with independent variables. It would have been obvious to one of ordinary skill in the art to have modified the invention



disclosed in Li, that incorporates calculation of correlation coefficients, by the teaching of the MR website, which expands the dependency of a dependent variable into multiple independent variables, in order to manage those values dependent upon multiple independent variables appearing to lie outside a general pattern (pg. 6). Applicant is merely repeating the use of MLR for one or more different independent variables followed by the comparison of a predicted value of a dependent variable to an actual value of that dependent variable. This is followed by elimination from consideration of an actual value (and other factors associated with it – e.g., a particular stock associated with that actual value) based on how the actual value relates to the predicted value – by elimination of outliers that are more than a threshold variance from a predicted value, as shown on pg 12 of MR website.

Further, MR website generally discusses multiple linear regression, but does not specifically indicate a reference to stocks. Applicant's recitation of a "financial statistic" regarding a stock being the value used in the equation constitutes nonfunctional descriptive material that does not further limit the claimed invention. This type of information, relating to the type of data being processed in the method, is not functionally related to the method. Accordingly, this recitation is not given patentable weight. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983).

As to claim 2, Li in view of MR website shows all elements of claim 1.

Li does not specifically show wherein the step of creating an equation further involves iteratively performing multiple linear regression using the one or more computers wherein outliers are eliminated from use in creating the equation after at least one

iteration; nor does the combination show wherein outliers comprise stocks whose degree of over-valuing or under-valuing relative to the value of other ones of the plurality of stocks as determined by the most recent iteration of the regression exceeds a threshold multiple of standard deviations.

The MR website teaches a regression line with outliers that may be eliminated from consideration after an initial calculation shows values that lie outside an overall pattern (pg. 6). Elimination of those values requires a subsequent calculation that does not include that value. The MR website further teaches that outliers may be determined as those points lying more than 2 standard deviations from an estimated value (pg. 12).

It would have been obvious to one of ordinary skill in the art to have modified the invention disclosed in Li by the teaching of the MR website in order to manage those values appearing to lie outside a general pattern (pg. 6).

Applicant's recitation of a "stock" used in the equation constitutes nonfunctional descriptive material that does not further limit the claimed invention. This type of information is not functionally related to the method. Accordingly, this recitation is not given patentable weight. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983).

As to claim 3, Li in view of MR website shows all elements of claim 1. Li further shows wherein at least one of a plurality of statistic types comprises a financial statistic that is non-unique to any particular stock in the plurality of stocks (col. 6, lines 36- 40, showing consideration of interest rates in conjunction with col. 4, lines 40-59 and col. 5, lines 27-54, showing calculation of coefficients using historical and real time data).

As to claim 4, Li in view of MR website shows all elements of claim 1. Li further shows wherein creating an equation further comprises calculating the plurality of coefficients using at least one stepwise linear regression (col. 4 lines 40-60, showing calculation of coefficients with linear regression techniques).

As to claim 6, Li in view of MR website shows all elements of claim 1. Li further shows wherein at least some stocks are rejected from consideration for purchasing or selling based upon a second elimination criterion wherein the rejection is determined using the one or more computers (col. 5, lines 50-54, showing determination of overbought assets, indicating rejection from being purchased because it is too expensive).

As to claim 7, Li in view of MR website shows all elements of claim 6. Li further shows wherein the second elimination criterion comprises at least one criteria selected from the group comprising: insufficient liquidity, operation at a loss, a dramatic recent change in share price, sensitivity to interest rate changes, a price to earnings ratio above a particular threshold, and a price to earnings ratio below a particular threshold (col. 4, lines 46 – 59, showing Beta as a quantitative measure of volatility (price change) in conjunction with col. 6, lines 45-48, showing buy/sell advice given based on this information).

As to claim 9, Li in view of MR website shows all elements of claim 1.

Applicant's recitation "wherein at least some of the plurality of statistics comprise data that must be reported to a government entity" constitutes nonfunctional descriptive material that does not further limit the claimed invention. This type of information, relating

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to the type of data being processed in the method steps, is not functionally related to the performance of the method step. Accordingly, this recitation is not given patentable weight. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983).

As to claim 11, Li shows a system for investing, comprising:

software contained within a computer-readable medium (abstract, col. 4, lines 15-45) and when executed operable to:

create a first equation for a plurality of stocks, wherein the equation is created using regression techniques to calculate a plurality of coefficients each associated with one of a plurality of statistic types that is correlated with a first value measure of the plurality of stocks wherein at least some of the plurality of statistic types comprise financial information, other than the particular stock's past market price, specific to the entity associated with the particular stock and wherein a dependent variable of the first equation comprises a measure predictive of market value (col. 4, lines 40-59 and col. 5, lines 27-54, showing calculation of coefficients using historical and real time data, and linear regression);

wherein the first value measure comprises a value measure selected from the group consisting of actual market price, price to earnings ratio, price to book value ratio, and price to revenue ratio (col. 8, lines 40-45 and fig. 3);

use the first equation to estimate the degree to which ones of the plurality of stocks are over-valued or under-valued relative to the plurality of stocks as a whole (col. 4, lines 40-59 and col. 5, lines 27-54, showing calculation of coefficients using historical

and real time data, including Beta (from linear regression), then using this information to determine if asset is overbought or oversold);

based upon the estimates made using the equation, providing data identifying at least some stocks, futures contracts on at least some stocks, or options on at least some stocks, in the plurality of stocks to purchase or sell wherein the data so identified does not include stocks eliminated from consideration using the first elimination criteria (col. 5, line 40 through col. 6, line 11-21, showing calculations and analysis of various indicators and recommendations to buy or sell based on that information).

Li does not expressly show software contained within a computer-readable medium and when executed operable to eliminate some stocks from consideration for purchasing or selling based upon a first elimination criterion wherein the first elimination criterion itself is determined using a second equation created using multiple linear regression techniques to determine a prediction of the value of a particular financial statistic and wherein the first elimination criterion comprises eliminating stocks where the actual value of the particular financial statistic for a stock exceeds a threshold variance from the prediction of the value of the particular financial statistic for the stock and wherein the particular financial statistic is different from the dependent variable of the first equation; and wherein the data so identified does not include stocks eliminated from consideration using the first elimination criteria

The MR website teaches that multiple regression is used to predict the variance in a dependent variable based on combinations of independent variables (pg. 1). MR Website further shows eliminating some stocks from consideration for purchasing or

selling, using the one or more computers, based upon a first elimination criterion wherein the first elimination criterion itself is determined using a second equation created using multiple linear regression techniques to determine a prediction of the value of a particular financial statistic and wherein the first elimination criterion comprises eliminating stocks where the actual value of the particular financial statistic for a stock exceeds a threshold variance from the prediction of the value of the particular financial statistic for the stock and wherein the particular financial statistic is different from the dependent variable of the first equation (page 12, indicating elimination of outliers of a value more than 2 standard deviations from a predicted value, shows eliminating outliers of an equation created using multiple linear regression). MR Website presents generally an independent variable, which may be determined by a user, being correlated with independent variables. It would have been obvious to one of ordinary skill in the art to have modified the invention disclosed in Li, that incorporates calculation of correlation coefficients, by the teaching of the MR website, which expands the dependency of a dependent variable into multiple independent variables, in order to manage those values dependent upon multiple independent variables appearing to lie outside a general pattern (pg. 6). Applicant is merely repeating the use of MLR for one or more different independent variables followed by the comparison of a predicted value of a dependent variable to an actual value of that dependent variable. This is followed by elimination from consideration of an actual value (and other factors associated with it – e.g., a particular stock associated with that actual value) based on how the actual value relates to the predicted value – by elimination of

outliers that are more than a threshold variance from a predicted value, as shown on pg 12 of MR website.

Further, MR website generally discusses multiple linear regression, but does not specifically indicate a reference to stocks. Applicant's recitation of a "financial statistic" regarding a stock being the value used in the equation constitutes nonfunctional descriptive material that does not further limit the claimed invention. This type of information, relating to the type of data being processed in the method, is not functionally related to the method. Accordingly, this recitation is not given patentable weight. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983).

As to claim 13, Li in view of MR website shows all elements of claim 11.

Li does not specifically show wherein the software is further operable to: at some point before final creation of the first equation, eliminate at least one stock from the plurality of stocks for use in determining the first equation based upon a numerical criteria indicating that the at least one stock comprises an outlier from a statistical point of view.

The MR website shows at some point before final creation of a regression equation, eliminating at least one point from the plurality of points for use in determining the equation based upon a numerical criteria indicating that the at least one point comprises an outlier from a statistical point of view (pg. 6).

It would have been obvious to one of ordinary skill in the art to have modified the invention disclosed in Li by the teaching of the MR website in order to manage those values appearing to lie outside a general pattern (pg. 6).

Applicant's recitation of a "stock" used in the equation constitutes nonfunctional descriptive material that does not further limit the claimed invention. This type of information is not functionally related to the method. Accordingly, this recitation is not given patentable weight. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983).

As to claim 15, Li in view of MR website shows all elements of claim 11. Li further shows wherein the software is further operable to reject at least some stocks from consideration for purchasing or selling based upon a second elimination criterion (col. 5, lines 50-54, showing determination of overbought assets, indicating rejection from being purchased because they are too expensive).

As to claim 16, Li in view of MR website shows all elements of claim 15. Li further shows wherein the second elimination criterion comprises at least one criterion selected from the group comprising: insufficient liquidity, operation at a loss, a dramatic recent change in share price, sensitivity to interest rate changes, a price to earnings ratio above a particular threshold, and a price to earnings ratio below a particular threshold (col. 4, lines 46 – 59, showing Beta, a second elimination criterion, as a quantitative measure of volatility (price change)).

As to claim 18, Li in view of MR website shows all elements of claim 11.

Applicant's recitation "wherein at least some of the plurality of statistic types comprise statistics that must be reported to a government entity" constitutes nonfunctional descriptive material that does not further limit the claimed invention. This type of information is not functionally related to the method. Accordingly, this recitation is



not given patentable weight. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983).

18. Claims 5, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li in view of MR website and further in view of Ciampi (U.S. 7,167,837).

As to claim 5, Li in view of MR website shows all elements of claim 1.

Li in view of MR website does not specifically show wherein the plurality of statistic types does not include certain statistic types that were eliminated using a correlation analysis.

Ciampi teaches wherein the plurality of statistic types does not include certain statistic types that were eliminated using a correlation analysis (col. 9, lines 5-12 and 38-60, showing significant statistic types, implying elimination of nonsignificant statistic types and col. 3, lines 14-26, showing relation between statistical significance and correlation).

It would have been obvious to one of ordinary skill in the art to have modified the invention disclosed in Li in view of MR website by the teaching of Ciampi in order to provide a more accurate method of valuing financial instruments (col. 2, lines 31-34).

As to claim 14, Li in view of MR website shows all elements of claim 11.

Li in view of MR website does not specifically show wherein the equation comprises a weighted average of results produced from a plurality of additional equations created using multiple linear regression techniques.

Ciampi teaches wherein the equation comprises a weighted average of results produced from a plurality of additional equations created using multiple linear regression techniques (col. 5, line 59 through col. 6, line 57).

It would have been obvious to one of ordinary skill in the art to have modified the invention disclosed in Li in view of MR website by the teaching of Ciampi in order to provide a more accurate method of valuing financial instruments (col. 2, lines 31-34).

19. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li in view of MR website and further in view of admitted prior art.

(Examiner reiterates the following discussion of Official Notice from the MPEP:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate. (MPEP § 2144.03(C))

Applicant's silence to Examiner's taking of official notice (in office action dated 10/31/2007) is the same as Applicant not "specifically pointing out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." For these reasons, the following are taken to be admitted prior art:

- selling short is a technique used by investors who try to profit from the falling price of a stock and further that a stock that is overvalued is considered priced too high and is expected to fall. Conversely, the price of a stock that is undervalued is expected to rise, leading to a purchase with the expectation of that stock increasing in value (claims 10 and 12).)

As to claim 10, Li in view of MR website shows all elements of claim 1. Li further shows identifying an overvalued set of stocks and an undervalued set of stocks based upon the equation using one or more computers wherein the overvalued set and undervalued set are each formed from the at least some of the plurality of stocks (col. 5, lines 51-54).

Li in view of MR website does not specifically show selling short, buying or selling futures contracts on, or buying or selling options on at least some stocks in the overvalued set of stocks; and buying, buying or selling futures contracts on, or buying or selling options on at least some stocks in the undervalued set of stocks.

It is taken as admitted prior art that selling short is a technique used by investors who try to profit from the falling price of a stock and further that a stock that is overvalued is considered priced too high and is expected to fall. Conversely, the price of a stock that is undervalued is expected to rise, leading to a purchase with the expectation of that stock increasing in value.

As to claim 12, Li in view of MR website shows all elements of claim 11. Li further shows wherein the software is further operable to: for the at least some of the plurality of

stocks, identify an overvalued set of stocks and an undervalued set of stocks based upon the first equation (col. 5, lines 51-54).

Li in view of MR website does not specifically show sell short, buy or sell futures contracts on, or buy or sell options on at least some stocks in the overvalued set of stocks; and buy, buy or sell futures contracts on, or buy or sell options on at least some stocks in the undervalued set of stocks.

It is taken as admitted prior art that selling short is a technique used by investors who try to profit from the falling price of a stock and further that a stock that is overvalued is considered priced too high and is expected to fall. Conversely, the price of a stock that is undervalued is expected to rise, leading to a purchase with the expectation of that stock increasing in value.

### ***Conclusion***

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carol See whose telephone number is (571)272-9742.

The examiner can normally be reached on Monday - Thursday 6:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dixon, can be reached on (571) 272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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